

**Town of Georgetown -- Appeal
Department Order #13-09, Mandatory Shoreland Zoning Act**

Department of Environmental Protection Permit Under Appeal

- **Conditional Approval and Partial Denial #13-09 (April 28, 2009)**



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCIO

GOVERNOR

DAVID P. LITTELL

COMMISSIONER

April 29, 2009

Catherine Collins
Town Clerk
Town of Georgetown
P.O. Box 436
Georgetown, Maine 04548-0436

Subject: CONDITIONAL APPROVAL & PARTIAL DENIAL #13-09,
Shoreland Zoning Ordinance Amendments

Dear Ms. Collins,

Please find enclosed a copy of Department Order #13-09 conditionally approving and partially denying the Town of Georgetown Shoreland Zoning Ordinance and Town of Georgetown Shoreland Zoning Data map (Map), as adopted on March 11, 2009. The conditions of approval are binding on the Town and must be administered as part of the municipal ordinance. Should the ordinance be amended in the future to address the issues identified in the conditions, the Department can then fully approve the ordinance and repeal the conditions of approval.

In addition, as previously stated in the Department's letter, dated April 7, 2009, a certain freshwater wetland located adjacent to Tibbett's Lane and Bay Point Road (see attached map) is missing on the Map. This wetland must be protected by the Town with a Resource Protection District. At the next available opportunity, the Town must amend its map to include this freshwater wetland and regulate it with a 250-foot Resource Protection District.

Should you or the other town officials have any questions, please contact me at 822-6328.

Sincerely

Mike Morse
Assistant Shoreland Zoning Coordinator
Bureau of Land and Water Quality

enclosed: Department Order #13-09; IWWH Map

cc: Planning Board
Bob Trabona, CEO
file

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: (207) 760-3143



Town of Georgetown Inland Waterfowl & Wading Bird Habitat Area



This map depicts the 250-foot minimum Resource Protection District required to be established by the Town of Georgetown. The RP District is required due to the moderate or high value Inland Waterfowl & Wading Bird Habitat rating by the Maine Department of Inland Fisheries & Wildlife as of 12/31/08.



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

TOWN OF GEORGETOWN) MANDATORY SHORELAND ZONING ACT
SAGadahoc COUNTY) 38 M.R.S.A., SECTION 438-A (3)
SHORELAND ZONING ORDINANCE) CONDITIONAL APPROVAL AND
FILE #13-09) PARTIAL DENIAL

Pursuant to the provisions of 38 M.R.S.A., Section 435-449, and 06-096 CMR, Chapter 1000, State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, effective March 24, 1990, and amended through May 1, 2006, the Department of Environmental Protection has considered the shoreland zoning provisions within the Town of Georgetown Shoreland Zoning Ordinance for the TOWN OF GEORGETOWN, as amended through March 11, 2009, and FINDS THE FOLLOWING FACTS:

1. The Mandatory Shoreland Zoning Act (Act) requires the Town of Georgetown (Town) to establish zoning controls in areas within 250 feet of the normal high water line of great ponds, and rivers; within 250 feet of the upland edge of freshwater and coastal wetlands; and within 75 feet of streams. Such zoning standards must be consistent with or no less restrictive than those in the State of Maine Guidelines for Municipal Shoreland Zoning Ordinances, (Guidelines) as adopted by the Board of Environmental Protection (Board).
2. The Act specifies that before a locally adopted shoreland zoning ordinance, or amendments to that ordinance, is/are effective, it must be approved by the Commissioner of the Department of Environmental Protection (Department). The Department may approve, approve with conditions, or disapprove a locally adopted ordinance. If disapproved, or approved with conditions, such action must be preceded by notice to the municipality.
3. On March 16, 2009, the Town of Georgetown submitted a copy of their amended Shoreland Zoning Ordinance (Ordinance), as adopted on March 11, 2009, to the Department for review. The Ordinance includes numerous changes that affect shoreland zoning application. These changes were made in order to update the Town's Ordinance in an effort to make it consistent with the May 1, 2006 Guidelines. The Department review of the Town of Georgetown Shoreland Zoning Ordinance revealed the following deficiencies:

TOWN OF GEORGETOWN
SAGADAHOC COUNTY
SHORELAND ZONING ORDINANCE
FILE #13-09

2 MANDATORY SHORELAND ZONING ACT
) 38 M.R.S.A., SECTION 438-A(3)
) CONDITIONAL APPROVAL AND
) PARTIAL DENIAL

- A. The use of the definition "Developed Area" and its intended purpose, to remove otherwise required Resource Protection District areas, is inconsistent with the requirements of the Guidelines. Therefore, this definition must be deleted from the Ordinance.
 - B. The recently adopted Georgetown Shoreland Zoning Data map (Map) has been amended to re-zone a number of lots that had previously been regulated with a Resource Protection District, to now be zoned with a Limited Residential District. This amendment causes the Map to be deficient of the required Resource Protection District designation on fourteen lots along moderate or high value salt marshes or salt meadows. The removal of the Resource Protection District from these lots does not comply with the Guidelines or the Department's policies for establishing 'areas which are currently developed'. The Town has not documented any special local conditions and submitted them to the Commissioner of the Department for review that supports the elimination of the Resource Protection District in the affected areas.
4. In a letter dated April 7, 2009, the TOWN OF GEORGETOWN was notified by the Department about the deficiency described in Finding 3.

Based on the above Findings of Fact, the Department makes the following CONCLUSIONS:

1. The Town of Georgetown Zoning Ordinance, as amended through March 11, 2009, is substantially consistent with the requirements of the Mandatory Shoreland Zoning Act, 38 M.S.R.A., Section 438-A, EXCEPT FOR the deficiencies described in Finding 3.
2. The Department can correct the deficiencies described in Finding 3 by approving the Town of Georgetown Shoreland Zoning Ordinance with the condition that the Ordinance be changed to reflect the concerns described in Finding 3.

THEREFORE, the Department APPROVES the Shoreland Zoning Ordinance for the TOWN OF GEORGETOWN, as adopted on March 11, 2009, WITH THE FOLLOWING CONDITIONS:

1. The Town of Georgetown Shoreland Zoning Ordinance shall be amended to delete the term "Developed area" from Section 17, Definitions, of the Ordinance.
2. The removal of the Resource Protection District on fourteen lots as shown on the Town of Georgetown Shoreland Zone Data map is denied. The

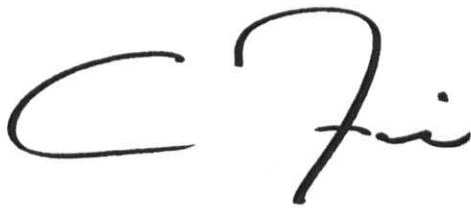
TOWN OF GEORGETOWN
SAGADAHOC COUNTY
SHORELAND ZONING ORDINANCE
FILE #13-09

3 MANDATORY SHORELAND ZONING ACT
) 38 M.R.S.A., SECTION 438-A(3)
) CONDITIONAL APPROVAL AND
) PARTIAL DENIAL

following fourteen lots shall remain zoned with a Resource Protection District as previously adopted by the Town:

R2 L11	R2 L2	R3 L7-23
R3 L7-24	R3 L7-17	R4 L26-9
R6 L7E	R8 L1-6	R8 L1-5
R8 L1-4	R8 L1-3	R8 L1-2
R8 L1-1	R6 L49	

DEPARTMENT OF ENVIRONMENTAL PROTECTION



This permit has been digitally signed by Andrew C. Fisk on behalf of Commissioner David P. Littell. It is digitally signed pursuant to authority under 10 M.R.S.A. § 9418. It has been filed with the Board of Environmental Protection as of the signature date 2009.04.28 08:05:22 -04'00'

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's General Laws, 38 M.R.S.A. § 341-D(4), and its Rules Concerning the Processing of Applications and Other Administrative Matters (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.

6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.

7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5)

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.

2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.

3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION: If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.
